

**HARRY FREITAS, DIRECTOR**

**MITIGATED NEGATIVE DECLARATION**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

**NAME OF PROJECT:** Lake Cunningham Bike Park

**PROJECT FILE NUMBER:** PP15-008

**PROJECT DESCRIPTION:** The project is the development of a bike park at Lake Cunningham Park. Proposed improvements include the following features: beginner track area, youth pump track, intermediate/advanced pump track, free ride area, dirt jumps, skills trail, dual slalom trail, free ride drops, prefabricated riding features, and site furnishings.

**PROJECT LOCATION & ASSESSORS PARCEL NO.:** The Project is located within Lake Cunningham Regional Park, located north of Tully Road between Capitol Expressway and White Road in south San José. The bike park is proposed on approximately six acres surrounding the existing Lake Cunningham Regional Skate Park. The Assessor's Parcel Numbers (APNs) are 491-01-031 and 491-02-074 on the Santa Clara County Assessor's Parcel Map.

**COUNCIL DISTRICT:** 5

**PROJECT PROPONENT CONTACT INFORMATION:** City of San José Department of Parks, Recreation & Neighborhood Services, 200 E. Santa Clara Street, San José, CA 95113. Contact: Chris Mastrodicasa, (408) 535-8416, [chris.mastrodicasa@sanjoseca.gov](mailto:chris.mastrodicasa@sanjoseca.gov)

**FINDING:** The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached Initial Study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

**MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL**

- I. **AESTHETICS.** The project will not have a significant impact on aesthetics or visual resources, therefore no mitigation is required.

- II. AGRICULTURE AND FOREST RESOURCES.** The project will not have a significant impact on agriculture or forest resources, therefore no mitigation is required.
- III. AIR QUALITY.** The project will not have a significant air quality impact, therefore no mitigation is required.
- IV. BIOLOGICAL RESOURCES.** Trees located along the perimeter of the project site may provide nesting habitat for raptors and other protected birds as well as roosting habitat for special-status bat species that could be disturbed during project construction. The following mitigation will reduce this impact to a less-than-significant level.

**Mitigation Measure BIO1:** If possible, construction should be scheduled between October and December (inclusive) to avoid the nesting season for raptors and other migratory birds. If this is not possible, pre-construction surveys for nesting birds shall be conducted by a qualified ornithologist to identify active nests that may be disturbed during project implementation. Projects that commence construction between February 1 and August 31 shall conduct pre-construction surveys for nesting birds within 14 days of the onset of construction. Pre-construction surveys will be conducted by a qualified biologist for nesting birds within the onsite trees as well as all trees within 250 feet of the site. If an active nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the CDFW, designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the City's Environmental Senior Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to the issuance of any grading or building permit.

**Mitigation Measure BIO2:** To avoid and reduce impacts to special-status bat species, the project applicant shall retain a qualified bat specialist or wildlife biologist to conduct site surveys during the reproductive season (May 1 through September 15) to characterize bat utilization of the site and potential species present (techniques utilized to be determined by the biologist) prior to any tree removal. Based on the results of these initial surveys, one or more of the following will occur:

- If it is determined that bats are not present at the site, no additional mitigation is required.
- If it is determined that bats are utilizing the site and may be impacted by the project, pre-construction surveys will be conducted no more than 30 days prior to any tree removal within 100 feet of construction limits. If, according to the bat specialist, no bats or bat signs are observed in the course of the pre-construction surveys, tree removal may proceed. If bats and/or bat signs are observed during the pre-construction surveys, the biologist will determine if disturbance will jeopardize a maternity roost or another type of roost (i.e., foraging, day, or night).
- If a single bat and/or only adult bats are roosting, removal of trees, buildings, or other suitable habitat may proceed after the bats have been safely excluded from the roost. Exclusion techniques will be determined by the biologist and depend on the roost type; the biologist will prepare a mitigation plan for provision of alternative habitat to be approved by CDFW.

- If an active maternity roost is detected, avoidance is preferred. Work in the vicinity of the roost (buffer to be determined by biologist) will be postponed until the biologist monitoring the roost(s) determines that the young are no longer dependent on the roost. The monitor will ensure that all bats have left the area of disturbance prior to initiation of limbing and/or removal of trees. If avoidance is not possible and a maternity roost must be disrupted, a depredation permit would be required prior to "take" of the roost.

**V. CULTURAL RESOURCES.** The project will not have a significant impact on cultural resources, therefore no mitigation is required.

**VI. GEOLOGY AND SOILS.** The preliminary geotechnical investigation called for more detailed analysis of the potential for the following soil conditions on the project site that could impact development: land settlement during strong seismic shaking and expansive soils. Mitigation is identified below to reduce this impact to a less-than-significant level.

**Mitigation Measure GEO1:** The project proponent shall retain a qualified geologist to provide an analysis of the potential for land settlement and expansive soils on the site, and incorporate the recommendations into final project design.

**VII. GREENHOUSE GAS EMISSIONS.** The project will not have a significant impact due to greenhouse gas emissions, therefore no mitigation is required.

**VIII. HAZARDS AND HAZARDOUS MATERIALS.** Because the project site is located on fill it is possible that undiscovered contamination could remain in onsite soils and be released during construction activities. Mitigation is identified below reduce this potential impact to a less-than-significant level.

**Mitigation Measure HAZ1:** To prevent hazards to the environment during the disposal of soil from the site, the project contractor shall retain a qualified professional to monitor the excavation of soil during construction. In the event that unusual suspect materials are observed, the material shall be sampled and analyzed prior to continuing excavation and disposal activities. The project contractor shall notify the Santa Clara County Environmental Health Department (SCCEHD) and appropriate planning and building department prior to grading activities and/or excavation. This notification shall include a statement that contamination may exist on the property and list the actions to be implemented if hazardous materials are encountered at levels that exceed appropriate cleanup levels, in accordance with the SCCEHD Mitigation Program.

**IX. HYDROLOGY AND WATER QUALITY.** The project will not have a significant hydrology and water quality impact, therefore no mitigation is required.

**X. LAND USE AND PLANNING.** The project will not have a significant land use impact, therefore no mitigation is required.

**XI. MINERAL RESOURCES.** The project will not have a significant impact on mineral resources, therefore no mitigation is required.

**XII. NOISE.** The project will not have a significant impact on noise, therefore no mitigation is required.

- XIII. POPULATION AND HOUSING.** The project will not have a significant population and housing impact, therefore no mitigation is required.
- XIV. PUBLIC SERVICES.** The project will not have a significant impact on public services, therefore no mitigation is required.
- XV. RECREATION.** The project will not have a significant impact on recreation, therefore no mitigation is required.
- XVI. TRANSPORTATION / TRAFFIC.** The project will not have a significant impact on traffic or transportation, therefore no mitigation is required.
- XVII. UTILITIES AND SERVICE SYSTEMS.** The project will not have a significant impact on utilities and service systems, therefore no mitigation is required.
- XVIII. MANDATORY FINDINGS OF SIGNIFICANCE.** The project will not degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, eliminate important examples of the major periods of California history or prehistory, be cumulatively considerable, or have a substantial adverse effect on human beings.

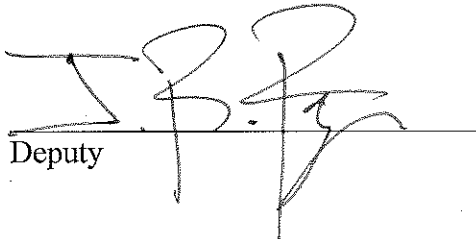
#### **PUBLIC REVIEW PERIOD**

Before 5:00 p.m. on **July 30, 2015**, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only;  
or
2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Harry Freitas, Director  
Planning, Building and Code Enforcement

Circulation period from July 10, 2015 to July 30, 2015.

  
Deputy